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IN THE
COURT OF APPEALS OF INDIANA

STANISLAW GIL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0611-CR-525
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0508-FC-167

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Stanislaw Gil appeals his sentence for four counts of reckless homicide as class C felonies[1] and one count of criminal recklessness as a class D felony.[2] Gil raises one issue, which we revise and restate as whether Gil's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On August 21, 2005, Gil drove a truck weighing 70,000 pounds into a construction zone in Elkhart County. Gil exceeded the speed limit for the construction zone. Gil failed to keep a proper watch for other traffic and what was happening with the traffic. Gil had alcohol in his system and caused a collision in the construction zone. As a result of the collision, Dmitri Karpov, Beverly Zinsmaster, Phillip Zinsmaster, and Joan Aubt were killed, and Margarita Karpov was seriously injured. Passengers in other vehicles also suffered injuries.

On August 26, 2005, the State charged Gil with four counts of reckless homicide as class C felonies and one count of criminal recklessness as a class D felony. The trial court set August 21, 2006, as the trial date. On August 4, 2006, Gil pleaded guilty to all the counts. The plea agreement stated, in part:

> The State further agrees to dismiss all other charges which are now pending against [Gil] arising from this incident, namely Indiana State Police Case #11-11261. The State will not file any additional charges involving this

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[1] Ind. Code § 35-42-1-5 (2004).

[2] Ind. Code § 35-42-2-2 (2004) (subsequently amended by Pub. L. No. 75-2006, § 3 (eff. July 1, 2006)).

> specific incident, and waives prosecution of all other charges which could have been brought as a result of this specific incident as alleged in the charging documents, or as reflected in the police reports in the aforementioned case number.

Appellant's Appendix at 20. The plea agreement left the sentencing to the trial court's discretion.

At the sentencing hearing, the trial court found the following mitigators: (1) Gil's lack of a criminal history; (2) Gil's expression of remorse; and (3) Gil's acceptance of responsibility. The trial court found the following aggravators: (1) at least three of the victims were over the age of sixty-five; (2) there were multiple offenses with multiple victims; (3) there were multiple other victims that were not a part of the charges; (4) one of the victims had extreme harm; (5) the impact on one of the victim's family; and (6) the fact that Gil had consumed alcohol and drove his 70,000 pound vehicle. The trial court imposed consecutive sentences of six years for each of the four reckless homicide convictions and suspended two and a half years on each count. The trial court sentenced Gil to two years on the criminal recklessness conviction and ordered that the sentence be concurrent to the other sentences. Thus, the trial court sentenced Gil to serve twenty-four years and suspended ten years for a total executed sentence of fourteen years.

The sole issue is whether Gil's sentence is inappropriate in light of the nature of the offense and the character of the offender. Gil argues that the trial court: (A) failed to

find significant mitigators; (B) improperly found several aggravators;[3] and (C) that the sentence is inappropriate in light of the nature of the offense and the character of the offender.

Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

We note that Gil's offense was committed after the April 25, 2005, revisions of the sentencing scheme.[4] Even assuming, without deciding, that our analysis under the revised sentencing statutes incorporates a review of aggravators and mitigators,[5] we

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[3] Gil argues that he is "not requesting remand to allow the trial court to fix its improper findings but is simply asking this Court to recognize those errors as part of its 7(B) review and reduce the sentence in light of those errors as part of the evaluation of the nature of the offense and the character of the offender." Appellant's Reply Brief at 5.

[4] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code § 35-50-2-5 (Supp. 2005). Under the amended sentencing scheme, trial courts "may impose any sentence that is . . . authorized by statute . . . and . . . permissible under the Constitution of the State of Indiana . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d) (Supp. 2005).

[5] This court "is currently divided on whether it is to review aggravators and mitigators found or not found by the trial court." Golden v. State (filed March 19, 2007), Ind. App. No. 49A05-0608-CR-449, slip op. at 5. See Anglemyer v. State, 845 N.E.2d 1087, 1091 (Ind. Ct. App. 2006) (holding that "[e]ven if an error relating to the trial court's finding of aggravating and mitigating circumstances occurs, under Indiana Code Section 35-38-1-7.1(d) we submit that any error is harmless"), trans. granted; and McMahon v. State, 856 N.E.2d 743, 748 (Ind. Ct. App. 2006) (concluding that "[e]ven under the new statutes, an assessment of the trial court's finding and weighing of aggravators and mitigators continues to be part of our review on appeal"), trans. not sought. See also Windhorst v. State, 858 N.E.2d 676 (Ind.

conclude that the trial court did not abuse its discretion by failing to assign weight to Gil's proposed mitigators.

A. Mitigators

"The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001), reh'g denied. However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

1. Guilty Plea

Gil argues that the trial court failed to mention Gil's guilty plea as a mitigating circumstance. The trial court did not specifically identify Gil's guilty plea as a mitigating

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Ct. App. 2006) (disagreeing with McMahon, 856 N.E.2d 743), trans. granted.

factor. Indiana courts have recognized that a guilty plea is a significant mitigating circumstance in some circumstances. Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), reh'g denied, cert. denied, 531 U.S. 858, 121 S. Ct. 143 (2000). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165.

We cannot say that the trial court overlooked Gil's guilty plea because it specifically noted that it was crediting Gil for accepting responsibility for his criminal conduct. See, e.g., Hardebeck v. State, 656 N.E.2d 486, 493-494 (Ind. Ct. App. 1995) (holding that "while the trial court did not identify [the defendant]'s guilty pleas as a separate mitigating factor, the court did acknowledge [the defendant]'s acceptance of responsibility for his crimes in its finding that he showed remorse" and that "[i]t is implicit in that finding that the court considered [the defendant]'s guilty pleas and gave them mitigating value"), trans. denied.

2. Likely to Respond to Probation

Gil argues that the trial court failed to find the fact that he is likely to respond affirmatively to probation or short term imprisonment as a mitigating circumstance. Specifically, Gil argues that "[b]ased on the facts of this offense and Gil's remorse and lack of criminal history, the trial court should have credited this mitigating circumstance." Appellant's Brief at 8. The trial court noted Gil's remorse and lack of

criminal history as mitigators. Further, the trial court suspended ten years to probation. Thus, the trial court inherently recognized the possibility that Gil might respond affirmatively to probation.

B. Aggravators

1. Victim's Ages

Gil argues that the age of the victims cannot be a proper aggravating circumstance in this case. During the sentencing hearing, the trial court stated:

> And Mr. Williams points out the fact that three of the victims were right around 65 or older. I had a question whether one of them was 65. I thought it was possible she was 64, but I'm not absolutely certain of that. But *McCann v. State*, 749 N.E.2.d 1116 [(Ind. 2001)] and *Shoulders v. State*, 480 N.E.2d 211 [(Ind. 1985)] and *Schwass v. State*, a 1990 case, all deal with that same issue as does our statute on aggravators.
>
> Three victims were approximately 65 years of age or older. This applies to at least three victims, and I will find that to be an aggravator warranting substantial consideration because three of the factors are result oriented, three deaths occurred of persons who were approximately 65 years or older.

Transcript at 68-69.

Gil argues that he could not have known the age of any of the victims at the time of the collision. We find McCann v. State, 749 N.E.2d 1116 (Ind. 2001), instructive. In McCann, the defendant was convicted of attempted murder, burglary, and attempted rape. On appeal, the majority of another panel of this court held that the trial court's consideration of the nature and circumstances of the crime was improper, in part, because the victim's pregnancy was "*a fact apparently unknown to McCann*." McCann v. State,

742 N.E.2d 998, 1006-1007 (Ind. Ct. App. 2001), trans. granted, vacated by 749 N.E.2d 1116 (Ind. 2001). Judge Vaidik dissented and stated:

> [T]he trial court was within its discretion to find as an aggravating circumstance that the victim of the attempted rape was pregnant at the time of the commission of the offense. A defendant takes a victim as he finds her. For example, IND.CODE § 35-38-1-7.1(b)(6) states that a court may consider as an aggravating circumstance that "[t]he victim of the crime was mentally or physically infirm." Likewise, the age of a victim may also be considered as an aggravating circumstance. IND.CODE § 35-38-1-7.1(b)(5). Nothing in the statute requires that the defendant know of the infirmity or age of the victim before these factors may be used as aggravating circumstances. . . . Thus, in this case, it was within the trial court's discretion to consider the pregnancy of the victim as an aggravating circumstance.
>
> The majority states "we are unaware of Indiana precedent that would cause [the victim's] state of pregnancy, as a fact apparently unknown to McCann, to be a proper aggravating circumstance." Op. at 1006 - 07. Similarly, I am unaware of Indiana precedent that would preclude the victim's pregnancy to be considered as a proper aggravating circumstance. The majority maintains that in Whitehead v. State, 511 N.E.2d 284 (Ind. 1987), cert. denied, our supreme court inferred that a victim's pregnancy must be known to a defendant before it is appropriate to use her pregnancy as an aggravating circumstance. I cannot agree. Rather, the supreme court merely provided that it was appropriate for a trial court to find "no excuse or provocation which would justify [the defendant's] attack on a woman five months pregnant." Whitehead, 511 N.E.2d at 296. I do not read the same inference into the supreme court's statement as the majority apparently does.

McCann, 742 N.E.2d at 1009.

On transfer, the Indiana Supreme Court agreed with Judge Vaidik "that pregnancy is similar to the infirmity or age of the victim in that the defendant's knowledge of these circumstances is not necessary for them to qualify as aggravating." McCann, 749 N.E.2d at 1120. The Indiana Supreme Court held:

> To be sure, knowledge of the victim's vulnerability adds to the culpability of the perpetrator, but aggravating circumstances turn on the consequences to the victim as well as the culpability of the defendant. Id. This understanding of aggravating circumstances comports with the Black's Law Dictionary definition of aggravation: "[a]ny circumstance attending the commission of a crime . . . which increases its guilt or enormity or adds to its injurious consequences . . . ." Black's Law Dictionary 60 (5th ed. 1979).

McCann, 749 N.E.2d at 1120. Based on McCann, we cannot say that the trial court improperly considered the age of the victims. See, e.g., Allen v. State, 719 N.E.2d 815, 818-819 (Ind. Ct. App. 1999) (holding that the age of an injured girl struck by a reckless driver was a valid aggravator), trans. denied.

2. Multiple Offenses / Victims

Gil argues that the trial court erred when it assigned aggravating weight on the basis that there were multiple offenses with multiple victims because Gil's actions were reckless and not intentional. "As a general rule, multiple killings warrant the imposition of consecutive sentences." Tobar v. State, 740 N.E.2d 109, 113 (Ind. 2000). We find Vance v. State, 860 N.E.2d 617 (Ind. Ct. App. 2007), instructive. In Vance, the defendant intentionally struck a vehicle containing three passengers with his vehicle. 860 N.E.2d at 619. The defendant was convicted of three counts of criminal recklessness. Id. On appeal, the defendant argued that the trial court erred when it ordered the sentences for the three convictions of criminal recklessness to run consecutively. Id. at 620. This court held:

> [The Indiana Supreme Court] has held that when a perpetrator commits the same offense against two victims, enhanced and consecutive sentences

> 'seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.'" Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003). Here, a single act resulted in separate harms, and we apply the principle enunciated in Serino. As such the trial court did not err when it imposed consecutive sentences on [the defendant]'s misdemeanor convictions.

Id. We cannot say that the trial court improperly considered this aggravator. See id.; Manns v. State, 637 N.E.2d 842, 845 (Ind. Ct. App. 1994) (holding that "the law does not prohibit the trial court from using the fact that more than one person died, as the result of a single accident, to enhance a sentence" and that "[t]he trial court did not err in considering the death of two people to be an aggravating factor").

3. Uncharged Crimes

Gil argues that the aggravator that there were uncharged crimes is improper. The trial court stated:

> The other one Mr. Williams points out is the fact that there are injuries greater than necessary to prove the element of a crime. I kind of looked at that same point last night when I was reviewing materials, and I came to a similar conclusion, although kind of in a different way. And the different way I looked at it was that there were multiple other victims of this crime that you committed that were not really a part of the charges.
>
> J. Flis, S. Flis, M. Jacob, M. Leone, A. Boehler, M. Boehler, and L. Stolison were all injured by your acts. That's seven people that we have not talked about here today that were also injured in this same collision. Luckily or fortunately or by divine intervention or whatever, they're still alive; and as near as I can tell, they have recovered from their injuries for which we are all grateful.

Transcript at 69. The trial court's sentencing order states:

> The Court also notes as an aggravating factor that there were other victim [sic] of the Defendant's criminal conduct that were not involved in this

> prosecution. These additional persons who were injured as a result of the Defendant's actions included J. Flis, S. Flis, M. Jacob, M. Leone, A. Baker, M. Boehler, and L. Stolison. The Court notes that many of these persons suffered serious injuries as a result of the acts of the Defendant and these are uncharged events.

Appellant's Appendix at 28-29.

Gil argues that "[n]o evidence regarding the extent of these injuries was offered at sentencing." Appellant's Brief at 11. The presentence investigation report reveals the following:

> Both the fifth and sixth vehicles in the median were approached by the officer. The fifth vehicle, a white 1990 Oldsmobile Cutlass, had 2 occupants identified as the driver, Judith Flis, date of birth 11/28/58 and the passenger was identified as Stella Flis, date of birth 11/06/21. They were both trapped in the vehicle and after the Bristol Fire Department was able to free them they were transported to Elkhart General Hospital for treatment of minor injuries and later released.
>
> The sixth vehicle involved was a tan 2005 Chrysler Town and Country with 5 occupants. The driver was identified as Melinda Jacob, date of birth 10/29/67, who was able to exit the vehicle; however, the 4 other occupants were transported to Elkhart General Hospital for minor injuries then subsequently released. They were identified as Marcy Leone, date of birth 9/17/71, Angela Butler, date of birth 07/28/66, Melissa Boehler, date of birth 09/29/65, and Lori Stolisov [sic], date of birth 02/08/67.

Appellant's Appendix at 35. While we conclude that the trial court may have overstated by calling the injuries serious, we cannot say that the use of uncharged crimes as an aggravator was improper. See, e.g., Singer v. State, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996) (holding that "[u]ncharged misconduct is a valid sentence aggravator").

4. Extreme Harm to One Victim

This aggravator relates to Margarita Karpov, who was injured in the collision. At the sentencing hearing, the trial court stated:

> [T]he extreme physical and mental and emotional harm done to the victim, the living victim; that is, Ms. Karpov, bears some consideration, and I will give it some consideration. *Boyd v. State*, 546 N.E.2d, 825 [(Ind. 1989)], I believe permits me to consider that as an aggravator as does *Davenport v. State*, 689 N.E.2d 1226 [(Ind. 1997), reh'g granted on other grounds, 696 N.E.2d 870 (Ind. 1998)]. I will consider that to be bearing on the issue of whether or not an aggravated sentence should be imposed.

Transcript at 70. The trial court's order states:

> The Court also notes that she has suffered severe and debilitating injuries over and above these injuries involved in the statutory elements of the crime. The Court notes that much of the harm she has suffered involves psychological and mental health issues.

Appellant's Appendix at 29.

Gil argues that "[a]lthough [Margarita Karpov's] injuries were certainly significant, it is not clear to what extent they exceed 'serious bodily injury,' which is an element of the offense." Appellant's Brief at 13. A factor constituting a material element of an offense cannot be used as an aggravating circumstance. See McCann, 749 N.E.2d at 1120. However, "even when serious bodily injury is an element of the crime charged, the severity of the injury may serve as a valid aggravating circumstance." Patterson v. State, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (relying on Lang v. State, 461 N.E.2d 1110, 1113 (Ind. 1984)).

The State charged that Gil "recklessly inflict[ed] serious bodily injury, to-wit: extreme pain on another person, to-wit: Margarita Karpov; all of which is contrary to the

form of I.C. § 35-42-2-2 . . . ." Appellant's Appendix at 6. Ind. Code § 35-42-2-2 provides that "[a] person who recklessly, knowingly, or intentionally . . . inflicts serious bodily injury on another person . . . commits criminal recklessness, a Class D felony." Ind. Code § 35-41-1-25 defines "[s]erious bodily injury" as "bodily injury that creates a substantial risk of death or that causes:

(1) serious permanent disfigurement;
(2) unconsciousness;
(3) extreme pain;
(4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
(5) loss of a fetus.

We find Hogan v. State, 274 Ind. 119, 409 N.E.2d 588 (1980), instructive. In Hogan, the defendant was convicted of robbery resulting in serious bodily injury to a person as a class A felony. 274 Ind. at 120-122, 409 N.E.2d at 589-590. The trial court found the extreme physical, mental, and emotional harm to the victims as an aggravating circumstance. Id. at 122, 409 N.E.2d at 591. On appeal, the defendant argued that his sentence was manifestly unreasonable. Id. at 122, 409 N.E.2d at 590. The Indiana Supreme Court held that "nothing in the record in this case which would indicate that the sentence was not appropriate for the offense or that it was inappropriately imposed as to the appellant." Id. at 122, 409 N.E.2d at 590-591. The court also noted the trial court's aggravators and held that "[g]iven such stated aggravating circumstances, we hold the sentence of the trial judge was entirely reasonable." Id. at 122, 409 N.E.2d at 591.

To the extent that Gil argues that it is not clear to what extent Margarita's injuries exceed serious bodily injury, we note that the presentence investigation report shows that Margarita Karpov was found in critical condition and air lifted to Parkview Hospital. At the sentencing hearing, Margarita testified that she woke up in the hospital "with metal rods sticking out of [her] stomach," spent two months in the hospital, had two surgeries, and had "countless hours of physical therapy because [she] could not walk" for months after leaving the hospital. Transcript at 42-43. Margarita missed a year of school as a result of her injuries. Thus, we conclude that the record supports the trial court's conclusion that Margarita sustained extreme harm. Based on Hogan, we conclude that the extreme physical, mental, and emotional harm done to Margarita Karpov constitutes a valid aggravating circumstance. See also Lang, 461 N.E.2d at 1113 (Ind. 1984) (defendant was charged with robbery as a class A felony, which included serious bodily injury as an element of the offense, and court held that "[t]he serious nature of the injuries to the victim in this case was one of the specific facts which the court could consider as an aggravating circumstance").

5. Impact on Victim's Family

Gil argues that the impact of Mr. Karpov's death cannot be an aggravator. The trial court's order states:

> The Court also notes that there was extreme physical, mental and emotional harm done to one victim in this action as a result of Margarita Karpov having to raise her minor child alone without a father.

Appellant's Appendix at 29.

"[U]nder normal circumstances the impact upon family is not an aggravating circumstance for purposes of sentencing." Bacher v. State, 686 N.E.2d 791, 801 (Ind. 1997). The impact on others may qualify as an aggravator in certain cases but the defendant's actions must have had an impact on other persons of a destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant. Id. The trial court failed to explain how Gil's actions had an impact of a destructive nature that is not normally associated with the commission of reckless homicide. Thus, we conclude that the trial court improperly considered this aggravator. See, e.g., Leffingwell v. State, 793 N.E.2d 307, 310 (Ind. Ct. App. 2003) (holding that the trial court improperly considered the effect on the victim's family as an aggravator because the trial court failed to explain how the defendant's actions had an impact of a destructive nature that was not normally associated with the commission of child molesting).

6. Alcohol Consumption

Gil argues that the trial court erred by aggravating the sentence based on the fact that Gil had consumed alcohol while operating a 70,000 pound truck on the Indiana Toll Road. The following exchange occurred at the sentencing hearing:

> THE COURT: . . . . It's clear there was alcohol use at some point prior to this collision occurring. Mr. Bowers makes an effective argument that that could be any one of us here in the courtroom driving our motor vehicle down the road. There's one difference between you, Mr. Gil, and any one of us is that you were driving a vehicle which I presume was loaded, was it?

MR. GIL: Yes.

THE COURT: And you were carrying probably 30,000 pounds or so. Right?

MR. GIL: Of load, yes.

THE COURT: What did he say?

MR. GIL: Total weight is about 70,000 pounds.

THE COURT: Just the load I'm talking about. The load was 30,000.

MR. GIL: Yeah.

THE COURT: Approximately.

MR. GIL: Yes.

THE COURT: And the vehicle weighed substantially more than that. Right?

MR. GIL: Yes.

THE COURT: So you say about 70,000 pounds.

MR. GIL: At least, to total at least.

THE COURT: Well, that's not much of a match for a 2,000 or a 2,500 pound car, is it?

MR. GIL: Yes.

THE COURT: In that sense the alcohol usage here is more significant because you were operating a substantially heavier piece of equipment with a substantial weight behind you. That magnifies, in my opinion, the effect of the alcohol because you are driving a vehicle that is (A) loaded, and (B) outweighs a car, all of which were

> stopped. That is a serious factor that I've considered in imposing a sentence in this action.

Transcript at 71-72. The trial court's order states, "The Court notes as an aggravating factor that the Defendant had consumed alcohol while operating an approximately 70,000 pound motor vehicle on the Indiana Toll Road and he disregarded the risk involved in consuming alcohol while operating his motor vehicle." Appellant's Appendix at 29.

Gil argues that the State "agreed that Gil's alcohol level was below .05" and that "an alcohol concentration less than .05 cannot be considered relevant evidence of intoxication in Indiana."[6] Appellant's Brief at 14. Gil cites to the State's following comments:

> And, finally, we believe that there's a nonstatutory aggravator in the fact that he had alcohol in his system at the time of this crash, and we believe that it was slightly below, giving again all benefits to Mr. Gill [sic], slightly below .05. And in this date [sic] .05 is relevant evidence of intoxication.

Transcript at 62. Gil relies on Ind. Code § 9-13-2-151 (2004), which provides that "[r]elevant evidence of intoxication" includes "evidence that at the time of an alleged violation a person had an alcohol concentration equivalent to at least five-hundredths (0.05) gram, but less than eight-hundredths (0.08) gram of alcohol per . . . two hundred

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[6] Gil also argues that this aggravator was inappropriate because "no facts regarding alcohol consumption were included in the charges or the factual basis for the guilty plea." Appellant's Brief at 14. However, Gil does not support this argument with citation to authority and has waived this argument on appeal. See Ind. Appellate Rule 46(A)8(a); Hough v. State, 690 N.E.2d 267, 275 (Ind. 1997) (holding that defendant waived argument because he failed to cite legal authority and present a cogent argument), reh'g denied, cert. denied, 525 U.S. 1021, 119 S. Ct. 550 (1998).

ten (210) liters of the person's breath." We note that the aggravator was not that Gil was intoxicated but that Gil drank alcohol and drove his truck.

Even assuming that the trial court erred by relying on the impact on the victim's family and the alcohol in Gil's system as aggravators, we note that the trial court noted that "any one of the aggravating factors which the Court has identified warrant the imposition of a consecutive sentencing scenario when weighed against the mitigating factors that the Court found." Transcript at 74.

C. Inappropriate Sentence

With the review of the aggravators and mitigators in mind, we now turn to a review of the nature of the offense and the character of the offender. Our review of the nature of the offense reveals that Gil drove a truck weighing 70,000 pounds into a construction zone in Elkhart County. Gil exceeded the speed limit for the construction zone and failed to keep a proper watch for other traffic and what was happening with the traffic. Gil had alcohol in his system and caused a collision in the construction zone. As a result of the collision, Margarita Karpov was seriously injured, and Dmitri Karpov, Beverly Zinsmaster, Phillip Zinsmaster, and Joan Aubt were killed.

Our review of the character of the offender reveals that Gil does not have a criminal history. Gil pleaded guilty shortly before trial and almost one year after the charges were filed in this case. Gil expressed remorse at sentencing and has had a consistent work history. After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of

the offense and the character of the offender. See, e.g., Vance v. State, 860 N.E.2d 617, 620 (Ind. Ct. App. 2007) (holding that trial court did not err by imposing consecutive sentences when a single act resulted in separate harms); Sipple v. State, 788 N.E.2d 473, 484 (Ind. Ct. App. 2003) (holding that defendant's maximum sentence for involuntary manslaughter was not inappropriate even though defendant had no criminal history and had pleaded guilty), trans. denied.[7]

For the foregoing reasons, we affirm Gil's sentence for four counts of reckless homicide as class C felonies and one count of criminal recklessness as a class D felony.

Affirmed.

SULLIVAN, J. and CRONE, J. concur

[7] Gil argues that Rodriguez v. State, 785 N.E.2d 1169 (Ind. Ct. App. 2003), trans. denied, is instructive. In Rodriguez, the defendant received the maximum sentence of eight years for operating a motor vehicle while intoxicated causing death. 785 N.E.2d at 1172. This court, reviewing the defendant's sentence under the prior statutes, held that two of the three aggravators used by the trial court were improper, and the trial court's sentence of eight years was inappropriate. Id. at 1179-1180. This court resentenced the defendant to three and a half years. Id. at 1180. We find Rodriguez distinguishable. Here, unlike in Rodriguez, the trial court did not sentence Gil to the maximum sentence of thirty-five years. Rather the trial court sentenced Gil to twenty-four years, with ten years suspended, for a total executed sentence of fourteen years. Further, this case involves four convictions of reckless homicide.